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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/572,688

03/21/2006

Carlos Galceran Martorell

3608

4928

7590
Striker Striker & Stenby
103 East Neck road
Huntington, NY 11743

10/28/2008

EXAMINER

WOLF, JUSTIN P

ART UNIT

PAPER NUMBER

4152

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/572,688	Applicant(s) MARTORELL, CARLOS GALCERAN	
	Examiner JUSTIN WOLF	Art Unit 4152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>03/21/2006</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Regarding claim 1, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

See MPEP § 2173.05(d).

4. Also regarding claim 1, the phrase "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

5. Regarding claim 3, the soaking of the kernels under pressure and at a substantially higher temperature is vague and indefinite because its parent claim 1 requires the soaking of kernels at room temperature and at atmospheric pressure.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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2. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (EP 0217368) in view of Merritt et al. (US 4767635).

Regarding claim 1, Evans teaches unpopped corn kernels soaked in an aqueous solution containing water and sodium chloride at a temperature about ambient for 60 minutes to 24 hours (Page 4, lines 6-9 and 14-16; Example 1). Evans also teaches drying the kernels in a forced draft oven for 60 minutes (Example 1).

Evans fails to teach a surface coating of shellac and flavoring agent and the packaging of the product.

Merritt et al. teaches a spray coating of edible adhesive including shellac and a flavorant and the packaging of the product (Col. 4, lines 43-48; Col. 11, lines 31-35; Col. 1, lines 55-58).

It would have been obvious to one of ordinary skill in the popcorn art to modify the method of Evans to include the spray coating with shellac and flavorant of Merritt et al. because the spray coating allows for a uniformly-coated free-flowing product that will retain its flavor that can be conveniently packaged (Merritt et al.; Col. 1, lines 55-58; Col. 2, lines 5-8).

Regarding the time limits of Claim 1, Evans and the claims differ in that Evans does not teach the exact same proportions as recited in the instant claims.

However, one of ordinary skill in the art at the time of the invention was made would have considered the invention to have been obvious because the compositional proportions taught by Evans overlap the instantly claimed proportions and therefore are considered to establish a prima facie case of obviousness. It would have been obvious

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to one of ordinary skill in the art to select any portion of the disclosed ranges including the instantly claimed ranges from the ranges disclosed in the prior art reference, particularly in view of the fact that;

“The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages”, In re Peterson 65 USPQ2d 1379 (CAFC 2003).

Regarding claim 2, Merritt et al. teaches stirring the aqueous solution of salt and water with a high speed mixer (Col. 4, lines 30-36).

It would have been obvious to one of ordinary skill in the popcorn art to modify the method of Evans to include the stirring of the solution of Merritt et al. because it would allow for the final product to be uniformly coated by a continuous layer of flavor coating.

Regarding claim 3, Evans teaches an increased temperature of the aqueous solution ranging from 100° F-170° F (Page 4, lines 14-16).

Regarding claim 4, Evans teaches the addition of a sodium chloride to flavor the kernels during the swelling step (Page 4, lines 6-9 and 25-28).

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following documents were made of record but were not cited in the action and could be relevant in future prosecution: May (US 4640842) and Schellhaass (US 5750166).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUSTIN WOLF whose telephone number is (571)270-7085. The examiner can normally be reached on M-Th 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Del Sole can be reached on (571)272-1130. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. W./
Examiner, Art Unit 4152

/Joseph S. Del Sole/
Supervisory Patent Examiner, Art Unit 4152